

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

| | | |
|---------------------------|---|------------------------|
| -----X | : | |
| UNITED PROBATION OFFICERS | : | |
| ASSOCIATION et al., | : | |
| Plaintiffs, | : | <u>ORDER</u> |
| -v.- | : | |
| | : | 21 Civ. 218 (RA) (GWG) |
| CITY OF NEW YORK et al., | : | |
| Defendants. | : | |

-----X
GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

A telephone conference to discuss the discovery dispute raised in Docket # 155 will take place on Tuesday, November 26, 2024, at 11:00 a.m. It is the Court's intention to decide the dispute based on the parties' letters unless a party shows good cause in advance of the conference why formal briefing should be required.

The Court directs the parties to email each other, by 2:00 pm on Monday, November 25, a list of all the witnesses who remain to be deposed from that side (fact or expert but not 30(b)(6)). This list should indicate each witness's availability and the attorney availability for every business day between December 9, 2024, and February 7, 2025. In every instance in which a witness or attorney is unavailable, the reason for the unavailability shall be given.

Following the mutual exchange of the lists, the plaintiffs (or if the parties agree, the defendants) shall then create a chart (or spreadsheet) that includes columns for each witness and an indication by means of "Yes" or "No" as to witness and attorney availability. The chart should be in roughly the following format with "Yes" indicating availability and "No" indicating unavailability:¹

¹ The sample chart below has columns for three witnesses but the chart transmitted to the Court should, of course, contain as many columns as there are witnesses remaining to be deposed. It will be helpful if the name of the witness is followed by a description: for example, "defense/fact" or "plaintiff/expert."

| Date | Witness # 1 | Witness # 2 | Witness # 3 | Plaintiffs' Counsel | Defendants' Counsel (and reason if not) |
|-------------|---------------------|--------------------------|--------------------|---|--|
| 12/9 | Yes | No (Medical appointment) | Yes | Yes | Yes |
| 12/10 | No (teaching class) | Yes | Yes | Yes | Yes |
| 12/11 | Yes | No (testifying in court) | Yes | No (previously scheduled hearing before District Judge) | Yes |
| 12/12 | Yes | Yes | Yes | Yes | No (vacation day scheduled) |

The chart shall be filed as an attachment to a letter on ECF by 9:00 a.m. on November 25, 2024. If it is more easily viewable in Excel form, it should be emailed to the Court as well.

The Court recognizes that a witness or attorney cannot be expected to “hold” all dates listed on the chart for any lengthy period. Thus, the Court plans to fix the deposition dates on November 26, 2024, so that no “hold” is required after that date.

The Court warns the parties that, if necessary, it may schedule a witness for deposition even in the face of a claim of unavailability. Thus, it is strongly recommended that dates of unavailability be kept to a minimum.

A few minutes prior to the date and time for the November 26, 2024, conference, the parties shall dial 646-453-4442 and use access code: 802 485 063#. (The public may also dial in but will be permitted only to listen.) When dialing in to the conference, the parties must be in a quiet indoor location and must not use a speakerphone. A telephone line and microphone technology with optimal quality should be used.

The Court will record the proceeding for purposes of transcription in the event a transcript is ordered. However, any other recording or dissemination of the proceeding in any form is forbidden.

Upon receipt of this order, each attorney or unrepresented party is directed to ensure that all other attorneys or unrepresented parties on the case are aware of the conference date and time.

The parties should follow paragraph 1. F of this Court's Individual Practices (available at: <https://nysd.uscourts.gov/hon-gabriel-w-gorenstein>) for any request for an adjournment.

SO ORDERED.

Dated: November 21, 2024
New York, New York



GABRIEL W. GORENSTEIN
United States Magistrate Judge